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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BURT REALTY COMPANY,
THE BURT COMPANY,

Petitioners,

vs.

DOUGHERTY COUNTY BOARD
OF TAX ASSESSORS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF GEORGIA

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QUESTIONS PRESENTED

I. Were the property tax assessments made by respondent against petitioners' real property (in comparison to assessments of personal property) unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment?

II. May the respondents assess petitioners' real property at fair market value while assessing the personal property of merchants and manufacturers at "wholesale" cost?

III. Was the duty to assess real property at market value supreme to the duty to avoid discrimination as mandated by the Equal Protection Clause of the Fourteenth Amendment?

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The petitioners, Burt Realty Company and The Burt Company, respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the Supreme Court of Georgia entered in this action on January 4, 1983.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia is included in Appendix A.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on January 4, 1983, and the petitioners' Motion for Rehearing was denied January 25, 1983. This petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C.A. §1257(3).

QUESTIONS PRESENTED FOR REVIEW

I. Were the property tax assess-

ments made by respondent against petitioners' real property (in comparison to assessments of personal property) unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment?

II. May the respondents assess petitioners' real property at fair market value while assessing the personal property of merchants and manufacturers at "wholesale" cost?

III. Was the duty to assess real property at market value supreme to the duty to avoid discrimination as mandated by the Equal Protection Clause of the Fourteenth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. United States Constitution, Amendment XIV, §1: All persons born or naturalized in the United States and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. Article VII, Section 1, of the Georgia Constitution: "All taxes shall be levied and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax..."

STATEMENT OF THE CASE

The petitioners seek this Court's

review of a decision of the Supreme Court of Georgia (reversing the trial court) which decision allows properties of the same class to be assessed and taxed differently.

Petitioners developed multiple residential building lots for the purpose of sale and filed an appeal to respondent's 1981 property tax assessments on the ground that said assessments exceeded the present market value and that the method of valuation was unconstitutional in that it violated both the Georgia and Federal Constitutions, because it lacked uniformity in comparison to the respondent's assessment of tangible personal property - inventories of merchants and manufacturers. Petitioners were denied relief at the administrative level, but the Superior

Court of Dougherty County sustained petitioners' appeal and held that the respondent failed to valuate merchants' and manufacturers' inventory at its fair market value and said taxation was not fairly equalized as required by the constitutional mandates.

The uncontradicted evidence demonstrated the respondents assessed petitioners' multiple developed lots at a retail price as published in multi-list, while assessing merchants' and manufacturers' inventory at their "cost" (or wholesale). Additionally, respondent admitted that while they inspect real property, they accept, without verification, a merchant's or manufacturer's statement as to quantity and "cost" of inventory as of date of valuation.

Respondent completely rejected petitioner's documented cost of subject lots and the testimony of qualified real estate appraisers as to demonstrate said lots market value, both of which were approximately 50% of respondent's assessment.

In reversing the trial court, the Supreme Court of Georgia ruled contrary to the settled law of Georgia, ignored the Constitution and emasculated the uniformity mandate of the Constitution and the Equal Protection Clause of the Fourteenth Amendment. The Court below ignored said constitutional mandates of the State and Federal Constitution.

Petitioner filed its motion for rehearing raising the issues presented in this petition, which rehearing was denied.

REASONS FOR GRANTING CERTIORARI

I. THE DECISION BELOW IS CONTRARY TO THE SETTLED LAW OF THIS COURT AND COMPLETELY UNDERCUTS THE CONSTITUTIONAL FOUNDATION OF THE TAXING POWER OF A STATE WHICH HAS FOR ITS PURPOSE THE DISTRIBUTION OF THE BURDEN OF TAXATION EVENLY AND EQUITABLY.

"In Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979, involving assessment for taxation of realty, being a species of property, or one kind of property included in the general class of property that was taxable under the State Constitution and laws. It was held: '1. Intentional and arbitrary assessment of the property of one owner for taxation at its true value, in accordance with the State Constitution and laws, while all other like property is systematically assessed

much lower, is a violation of the equal protection of the laws. 2. The owner aggrieved by this discrimination is entitled to have his assessment reduced to the common level, since by no judicial proceeding can he compel reassessment of the great mass of such property at its true value as the law requires.' See Phillips Petroleum Co. v. Townsend, 5 Cir. 63 F.2d 293 (3) and cit.; Georgia Railroad and Banking Co. v. Wright, 125 Ga. 589, 601, 604, 43 S.E. 52; Bohler v. Callaway, 267 U.S. 479, 45 S.Ct. 431, 69 L. Ed. 745. The above quoted decision related to a case where the property was assessed at its true value, while other like property was assessed at a much lower value. It would not relieve the inequality inhibited by the Constitution if the assessment first mentioned had been at less than

the true value of the property as in the instant case. If allowable, that would amount merely to a convenient means of avoiding the Equal Protection Clause of the Federal Constitution. It is palpable that inequality results from assessment of property at a fractional percent of its true value as compared with assessment of other similar property at a substantially lower percentage of its true value. The principle applies to the instant case, where the assessment against the property of the plaintiff (shares of corporate stock in a private corporation) was at 50 percent of its true value. The discrimination would not be more patent had the assessors intentionally and systematically excluded from assessment all intangible property except those of the complainant, but

assessing his tangibles at 50% of its true value. Such administration by the officials comes within the inhibition of the equal protection clause of the Fourteenth Amendment of the Federal Constitution." Montgomery v. Suttles, 191 Ga. 781, 135 S.E.2d 781 (1941).

"State tax discrimination is in violation of the equal protection clause of the Fourteenth Amendment." Bohler v. Callaway, supra, cited above.

It is interesting to note in the decision in Sioux City Bridge case, supra, cited above, the Court said:

> "This Court holds the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of the value at

> which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

Similarly, in Green v. Louisville & I.R. Co., 244 U.S. 499, 501, 37 S.Ct. 673, 61 L. Ed. 1280, the Court held: "...the duty to assess at full value is not supreme but yields to the duty to avoid discrimination."

This Court cannot allow a decision to stand which constitutes rank discrimination and does violence to the

Fourteenth Amendment.

II. THE DECISION BELOW IS A CLEAR DENIAL OF PETITIONERS' CONSTITUTIONAL RIGHT TO BE PROTECTED BY THE UNIFORMITY CLAUSE OF THE GEORGIA CONSTITUTION AND CONTRARY TO SETTLED LAW OF GEORGIA.

It is now too well established to admit to the contrary that the Georgia constitutional mandate of uniformity established as a single class of property all real property and all tangible personal property (with certain exceptions) for ad valorem tax purposes. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116. Both realty and personalty must be taxed alike to enforce the collection of taxes. Otherwise, said assessment is null and void as clearly violative of the uniform taxation clause of the Georgia Constitution. Hutchins v. Howard, 211

Ga. 830, 89 S.E.2d 183. Significantly, up to the instant decision, the Georgia Supreme Court decisions have consistently upheld a property owner's right to demand uniformity. See Brooks v. Carter, 216 Ga. 836 (2), 120 S.E.2d 332, Colvard v. Ridley, 218 Ga. 490 (1), 128 S.E.2d 732; Lott Investment Corp. v. City of Waycross, 218 Ga. 805 (2), 130 S.E.2d 741; Champion Papers, Inc. v. Williams, 221 Ga. 345, 144 S.E.2d 514.

III. THE COURT CANNOT COUNTENANCE ALLOWING PATENT DISCRIMINATION BY A TAX ASSESSOR WHICH IF NOT REVERSED CAN LEAD TO A POWER TO DESTROY THE SACRED RIGHT TO OWN REAL PROPERTY.

The United States Constitution incorporates many restrictions on the power of individual States, the most fundamental of which is that States cannot act arbitrarily.

The right to tax real property is not unbridled and if the constitutional prohibition of equal protection is to be invoked in a tax case, this is that case. See e.g. Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425, 63 L. Ed.2d 510, 100 S.Ct. 1223 (1980).

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgment and opinion of the Georgia Supreme Court.

Respectfully submitted,

Hilliard P. Burt

HILLIARD P. BURT
Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Hilliard P. Burt, a member of the bar of the Supreme Court of the United States and counsel for the Petitioners, Burt Realty Ccmpany and The Burt Company, hereby certify that I have served three (3) copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of Georgia by depositing same in the United States mail, first class postage prepaid, to:

W. SPENCER LEE
LEE & LEE
Post Office Box 1376
Albany, Georgia 31702

This 20th day of April, 1983.

Hilliard P. Burt
Attorney for Petitioners

APPENDIX A

In the Supreme Court of Georgia

Decided: January 4, 1983

39005. DOUGHERTY COUNTY BOARD OF TAX ASSESSORS v. BURT REALTY COMPANY.

39006. DOUGHERTY COUNTY BOARD OF TAX ASSESSORS v. THE BURT COMPANY.

HILL, Chief Justice.

Burt Realty Company and the Burt Company are corporations which develop residential property and own multiple residential building lots in Dougherty County which they hold solely for purposes of resale. Being dissatisfied with the 1981 valuation of their property, they filed a complaint with the Board of Tax Assessors. The property owners contended that the appraised value of their properties

exceeded the present market values and that the method of valuation was unconstitutional because it lacked uniformity in that it differed from the method of valuation of merchants' inventory. They then appealed the adverse ruling of the Board of Tax Assessors to the Board of Tax Equalizers, which denied their requests for relief. On appeal, however, the superior court granted the property owners' motion for summary judgment. The Dougherty County Board of Tax Assessors brings this appeal.

The record indicates that prior to 1981, the Board allowed developers who owned multiple residential lots a developer's discount amounting to approximately 50% of the retail value (asking price). In 1981, the Board declined to allow this discount, and

instead valued the lots at issue at retail value (asking price).[1]

The property owners supported their contention that the asking price is higher than market value with an appraisal which indicated that multiple lots are worth .4977% of the total asking price. The appraisal assumes the lots will be sold in three years and discounts the value

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[1] In response to a question at oral argument, counsel for the Board stated that the board would have used "comparables" to arrive at a value, but when the property owners objected, the Board decided to use the value placed on the lots by the owners, i.e., asking price. Counsel for the property owners did not appear.

We note that the Board apparently has created two methods of evaluating real property: (1) the value of developer's real property is fixed by the developer's asking price, and (2) the value of property owned by others is determined from sales of comparable property.

accordingly; other evidence introduced by the property owners suggests that it will take 10 years to sell all the lots.

The property owners' alternative contention is that the assessment is invalid because it "is not uniformly made with other and like property included in the digest. . . ." More specifically, they contend that the fact that merchants' inventory is valued at cost plus expenses of processing for sale, while lots held for sale are valued at retail price, violates the Constitution, which provides that: "All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Classes of subjects for taxation of property shall consist of tangible

property including money." Ga. Const. (1976), Art. VII, § I, Par. III.

The property owners are, of course, correct in contending that the Constitution requires that there be uniformity of taxation as between realty and tangible personalty (with certain exceptions not applicable here). Benson-Corwin, Inc. v. Cobb County School District, 239 Ga. 199, 200 (236 S.E.2d 361) (1977). Furthermore, the law provided that: "All property shall be returned for taxation at its fair market value." OCGA § 48-5-6; see OCGA § 48-5-2. Thus both tangible personal property and realty must be taxed at the same rate. But there is no requirement that the same method be utilized to determine what the fair market value is. Quite to the contrary, the court has repeatedly held

that the utilization of different methods to determine fair market value does not contravene the Constitution or the laws of Georgia. E.g., Wade v. Ray, 234 Ga. 234 (1) (214 S.E.2d 923) (1975); Rogers v. DeKalb County Board of Tax Assessors, 247 Ga. 726 (2) (279 S.E.2d 223) (1981). Likewise, utilization of different methods creates no infirmity under the United States Constitution. Rogers v. DeKalb County Board of Tax Assessors, supra. For example, real property recently sold may be valued at sales price, while other property is valued by comparable sales.

The trial court's order in these cases recites that summary judgment is granted to the property owners but does not set out findings of facts and conclusions of law. We understand the

order to constitute a ruling that the property owners were correct in asserting that the county could not use different methods of valuation for merchants' inventory and for lots held for sale by developers. For the reasons stated above, that ruling is reversed.

We do not understand the trial court's order to be a ruling that the valuation profferred by the property owners was the fair market value. Here the county argues that asking price is fair market value and the taxpayer counters that the fair market value is 49.77% of the asking price. Although, as a matter of fact, asking price generally exceeds sales price, we cannot say as a matter of law that the asking prices set by these property owners is greater than the

fair market values of the properties. Although the tax assessors or the property owners, or both, may be incorrect as a matter of fact, such determination cannot be made on motion for summary judgment, and it cannot be said that there is no geniune issue as to any material fact. Thus we remand for further proceedings consistent with this opinion.

Judgment reversed and remanded. All the Justices concur.